

Original

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Criminal Division – Felony Branch

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UNITED STATES	:	Case No.: 2011-CF1-15683
	:	
v.	:	Trial Date: March 25, 2013
	:	
ALBRECHT MUTH	:	Judge Canan
	:	
	:	

**MOTION FOR RECONSIDERATION OF RULING
AND INCORPORATED POINTS AND AUTHORITIES**

Albrecht Muth, by and through undersigned counsel, respectfully requests that the Court reconsider its February 6 and February 21, 2013 rulings that Mr. Muth is unable to represent himself. After hearing testimony from Mr. Muth’s physician at the United Medical Center Hospital on February 21, 2013, the Court found that Mr. Muth was incapable of representing himself because Mr. Muth had voluntarily placed himself in a precarious medical position due to his fasting. The Court found that the fasting limited Mr. Muth’s ability to participate fully in court proceedings. The Court has encouraged Mr. Muth to forgo the fast on several occasions. In so ruling, the Court has pitted Mr. Muth’s First Amendment right for the free exercise of religion against his Fifth Amendment right to due process and his Sixth Amendment right to be present and his right to represent himself. It is impermissible for one constitutional right to have to be surrendered in order to assert another constitutional right.

In support of this Motion, counsel state the following:

1. Mr. Muth is charged by indictment with one count of First Degree Murder, with aggravating circumstances, in violation of D.C. Code §§ 22-2101, 22-2104.01(b)(4)(10) and 22-4502.

2. Trial in this matter is scheduled for March 25, 2013.

3. On December 20, 2012, following a contested competency hearing at which the Court found Mr. Muth competent to stand trial, the Court conducted a *Faretta* inquiry and found Mr. Muth was knowingly, voluntarily and intelligently waiving his right to be represented by counsel. *Faretta v. California*, 422 U.S. 806 (1975). On that date, the Court granted Mr. Muth's request to represent himself.

4. Mr. Muth has been on a religious fast since December 20, 2012.

5. On February 6, 2013, a status hearing was held at which Mr. Muth's medical condition was discussed. At the conclusion of the hearing, the Court suspended Mr. Muth's right to represent himself.

6. On February 21, 2013, a further status hearing was held, at which the Court heard testimony of Dr. Russom Ghebrai, Mr. Muth's physician at the United Medical Center. Dr. Ghebrai testified, *inter alia*, that Mr. Muth was unable to sit or stand due to his fast. Dr. Ghebrai also testified, however, that Mr. Muth could be transported to court on a stretcher and could participate in court proceedings without significant health risks. Finally, Dr. Ghebrai testified that Mr. Muth's mental faculties were in tact, such that he was competent to make important medical and health care decisions.

7. At the conclusion of the February 21, 2013 status, the Court maintained its ruling that Mr. Muth was unable to represent himself. The Court ruled that Mr. Muth had voluntarily put himself in this position and that in so doing, he was being disruptive and not complying with court procedures.

8. At the February 21, 2013 hearing the Court also expressed concerns for transporting Mr. Muth to court for trial.

9. Mr. Muth has consistently maintained that his fast is religious. He has a constitutional right to the free exercise of his religion. *U.S. Const. amend. I*.

10. Mr. Muth has a constitutional right to the due process of law. *U.S. Const. amend. V*. Mr. Muth has a constitutional right to be present at his trial, and the right to represent himself. *U.S. Const. amend. VI; Faretta, 422 U.S. 806 (1975)*.

11. Mr. Muth should not be forced to surrender one constitutional right (free exercise of religion) in order to assert other constitutional rights (due process, presence or self representation). *See Simmons v. United States, 390 U.S. 377, 394 (1968)* (holding that a defendant's testimony at a suppression hearing cannot be used at trial, as it would force the defendant to choose between a Fourth Amendment claim and a Fifth Amendment privilege against self-incrimination).

12. Mr. Muth has not voluntarily absented himself from the proceedings and is not disrupting the proceedings. Testimony at the February 21st status hearing established that Mr. Muth could be brought to court in an ambulance stretcher, and that such transportation would not impact his physical health. Furthermore, in all proceedings before the Court, Mr. Muth has maintained appropriate courtroom decorum.

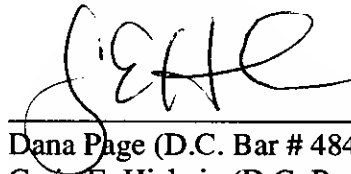
13. In fasting, Mr. Muth is freely exercising his religious beliefs. Pitting Mr. Muth's First Amendment right to free exercise of religion against his other constitutional rights makes any perceived absence from a court a result of coercion and renders such absence involuntary. *See e.g., Hoyt v. Lewin, 444 F. Supp. 2d 258, 276 (S.D.N.Y. 2006)*.

14. Not all burdens on religion are unconstitutional. However, here there is no overriding governmental interest. *Bob Jones University v. United States, 461 U.S. 574, 603 (1983)*, nor is any governmental interest here compelling. *Id.* at 604. Finally, suspension of Mr.

Muth's right to represent himself and failing to transport him to the court for the proceedings is not "the least restrictive means . . . available to achieve" any governmental interest. *Id.*

WHEREFORE, for the foregoing reasons and any that may appear to the Court at a hearing on this Motion, Mr. Muth respectfully requests that he be permitted to represent himself, and be present at all hearings, under the Sixth Amendment to the United States Constitution.

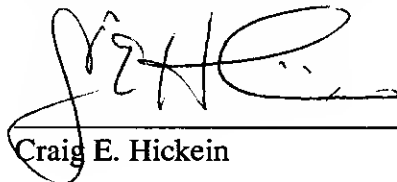
Respectfully submitted this 7th day of February 2013,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion has been hand-delivered in open court upon the Office of the United States Attorney, 555 Fourth Street, N.W., Washington, D.C., 20530, Attention: Glenn Kirschner and Erin Lyons, Esq., this 7th day of February 2013.



Craig E. Hickein